*__THE HONOURABLE SRI JUSTICE V.V.S.RAO__

+WRIT PETITION NO.20836 OF 2005

% 03.1.2006

G.RAJENDRANATH GOUD

...PETITIONER

Vs.

$ THE PRINCIPAL SECRETARY, ENDOWMENTS DEPARTMENT,
GOVERNMENT OF ANDHRA PRADESH, HYDERABAD

AND OTHERS

...RESPONDENTS

! COUNSEL FOR PETITIONER: MR. P.YADAGIR RAO

^ COUNSEL FOR RESPONDENTS 1 &2: G.P.FOR ENDOWMENTS

COUNSEL FOR RESPONDENT NO.3: MR.M.VIDYASAGAR

COUNSEL FOR RESPONDENT NO.4: NONE APPEARED

COUNSEL FOR RESPONDENT NO.5: MR.T.AMARNATH GOUD

<GIST

>HEAD NOTE:

? CASES REFERRED:

1. 1992(2) ALT 650 (D.B.)
2. (2004) 3 SCC 440
3. AIR 1996 SC 1023
4. (2001) 7 SCC 708 = AIR 2001 SC 3616

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20836 of 2005

03.1.2006

Between:

G.Rajendranath Goud

...Petitioner

Vs.

$ The Principal Secretary, Endowments Department,
Government of Andhra Pradesh, Hyderabad

and others

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.20836 of 2005

ORDER:

The petitioner is son of one Jagannath Goud. The respondents 3, 4 and 5 are his brothers. All of them are grandsons of one Jangaiah. He was a great devotee of Lord Venkateswara. He constructed a temple sometime before 1960 for Lord Venkateswara, which is known as Chikkadapalli Venkateswara Swamy Temple. The temple became very famous since 1960 onwards. It is indeed one of the few temples visited by tens of thousands of people of Hyderabad. No wonder the income of the temple statedly rose to more than Rs.1.00 crore per annum. The temple was registered under A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966 (hereafter called, 1966 Act) and Government appointed an Executive Officer.

Jangaiah alone was acting as hereditary trustee and managing the affairs of temple. Even during his time and after his death, his son Jagannath Goud (the father of the petitioner and respondents 3 to 5) took control of the temple. After demise of the father, it appears, the internecine tussle commenced for the control of the temple. When 1966 Act was still in force and was about to be repealed by new legislation, the petitioner herein moved an application before Deputy Commissioner of Endowments, Hyderabad under Section 77(1)(c) of 1966 Act. The Deputy Commissioner by order dated 23.5.1987 in O.A.No.1 of 1987 held that the trusteeship of Sri Venkateswara Swamy Temple is held in Jangaiah's family known as Gudidevuni family as founders and declared petitioner as hereditary trustee of the temple. After coming into force of A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (the new Act, for brevity) with effect from 28.5.1987, the petitioner herein again filed O.S.No.40 of 1987 before the Deputy Commissioner of Endowments, Hyderabad. This time he filed the application under Section 87(1)(e) of the new Act under which the Deputy Commissioner can resolve the question as to, "whether any person is entitled to by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment …". By order dated 17.8.1987, the Deputy Commissioner declared that the petitioner is entitled to get his name and gothram recited in the first pooja in the temple and that the petitioner and his heirs are entitled to sit during the poojas and utsavams. In both the proceedings i.e., O.A.No.1 of 1987 under the 1966 Act and O.A.No.40 of 1987 under the new Act, respondents 3 to 5 are not made parties. Be that as it is in the order dated 23.5.1987 in O.A.No.1 of 1987, the Deputy Commissioner observed that the respondents 3 to 5 gave affidavits expressing no objection if the petitioner is declared as hereditary trustee. This aspect is however disputed in these proceedings.

In the year 2000, the third respondent herein filed an application before the Assistant Commissioner of Endowments requesting to declare him as founder trustee of the temple. Initiating enquiry, the Assistant Commissioner issued notice No.D/97/2000 dated 24.4.2000 to the petitioner. Assailing the same, the petitioner filed W.P.No.8316 of 2000 *inter alia* contending that he is the hereditary trustee of Sri Venkateswara Swamy Temple, Chikkadapally and that the temple being Section 6(a) temple, the Assistant Commissioner has no jurisdiction to initiate such enquiry. A learned single Judge of this Court allowed the writ petition by an order dated 18.10.2001 observing that the proceedings initiated by Assistant Commissioner are unwarranted and without jurisdiction. This Court also observed that the order shall not be construed as declaring the petitioner as hereditary trustee in perpetuity.

Again, in the year 2005, the petitioner herein filed W.P.No.8690 of 2005 challenging the notification dated 12.4.2005 issued by the second respondent inviting applications for constitution of Board of Trustees. It was the contention of the petitioner that he has already been declared as hereditary trustee of the temple and that when his representation dated 12.8.2002 is pending, it was improper to issue a notification for appointment of Board of Trustees. By an order dated 20.4.2005, this Court directed the Government to dispose of the application of the petitioner before constituting Board of Trustees. In the meanwhile, the third respondent herein

appears to have approached the second respondent by making applications on 22.8.2003 and 30.6.2005 claiming himself to be the member of the founder's family. The representations were not disposed of by the second respondent and therefore, the third respondent filed W.P.No.17047 of 2005 seeking a direction for disposal of those two applications. By an order dated 03.8.2005 made in W.P.No.17047 of 2005, this Court disposed of the writ petition directing the second respondent herein to consider and pass orders on the applications of the third respondent within a period of two weeks from the date of receipt of a copy of that order and communicate the reasons for the decision. Pursuant thereto, the second respondent issued notice of enquiry dated 30.8.2005 to the petitioner and respondents 3 to 5 requesting them to attend the enquiry before the second respondent on 09.09.2005.

The second respondent and the fifth respondent have filed counter affidavits denying and disputing the right of the petitioner to get declared as a sole member of the founder's family. Allegations are also made by the fifth respondent against the petitioner to the effect that he is disqualified for being appointed as member and chairman of the board of trustees. The petitioner has also filed reply affidavits denying various allegations in counter affidavits. Those affidavits and reply affidavits, essentially highlight disputed factual matrix and need to be adverted to in this writ petition, if necessary.

The learned Counsel for the petitioner, Sri P.Yadagiri Rao, submits that as per Section 15(1)(a) read with Section 17(1) of the Act, the Commissioner has no jurisdiction to conduct enquiry into the question as to who is the member of the founder's family and that by reason of these provisions, it is only the Government which can conduct enquiry into the matter. He would also contend that though Section 87(1)(h) of the Act confers power on the Deputy Commissioner to decide the question as to whether a person is founder or a member of the founder's family of a religious institution, having regard to the Explanation I and Explanation II to subsection (1) of Section 17 of the Act, it is the Government which has to recognise the person as member of the founder's family. Nextly, he would urge that in the earlier proceedings the petitioner has been recognised as hereditary trustee of the temple and even after coming into force of A.P. Act No.30 of 1987, the declaration made earlier does not get extinguished. He placed strong reliance on the Division Bench judgment of this Court in **C.Ratnaswamy Mudaliar v. Government of A.P.**. The learned Counsel also contends that the declaration given by the competent authority in the earlier proceedings having become final, any person aggrieved by the same has to approach the competent authority for appropriate declaration and the second respondent cannot conduct any enquiry. Lastly, he would urge that lack of jurisdiction renders any enquiry conducted by the second respondent *non est* and therefore, even though it is a notice of enquiry, a writ petition would lie when such enquiry is unauthorized.

The learned Assistant Government Pleader for Endowments Department, Sri Sesha Sai, submits that the second respondent issued the impugned notice in obedience to the orders of this Court in W.P. No.17047 of 2005 dated 03.8.2005 and therefore the same is not illegal. He would also urge that the declaration in O.A.No.1 of 1987 does not prevent respondents 3 to 5 from seeking recognition as member of the founder's

family in view of the abolition of the hereditary rights. Secondly, he would urge that the order passed by the Deputy Commissioner in O.A.No.40 of 1987 cannot be taken as final for want of confirmation by the Commissioner of Endowments under Section 87(3) of the Act and that the petitioner was never recognised as a member of the founder's family after coming into force the Act 30 of 1987. It is also urged by the learned Assistant Government Pleader that the petitioner's son, G.Srinath Goud, filed an application seeking recognition as member of the founder's family but the petitioner did not challenge the same in this Court but choose to challenge the enquiry initiated by the second respondent on the application given by the respondents 3 to 5. The writ petition is not maintainable as the petitioner has all defences available and he can even raise question of jurisdiction before the second respondent. The learned Assistant Government Pleader does not however deny that under Section 87(1)(h) of the Act, Deputy Commissioner is competent to decide the question whether a person is member of the founder's family.

The learned Counsel for third respondent, Sri M.Vidya Sagar, and learned Counsel for fifth respondent, Sri T.Amaranath Goud, submit that the writ petition at the stage of enquiry is not maintainable and the petitioner cannot prevent any enquiry by the second respondent on an allegation that he has already been declared as a member of the founder's family. Both the Counsel vehemently contend that so far there is no declaration in favour of the petitioner and therefore, he has no *locus standi* to challenge the claim of respondents 3 to 5 for being declared them as members of the founder's family. They would urge that after abolition of hereditary trusteeship by reason of Section 16 of Act No.30 of 1987, the petitioner cannot claim any hereditary rights. The petitioner's claim if any was never considered nor the petitioner was declared as member of the founder's family. The learned Counsel also deny the allegations that the respondents 3 to 5 filed affidavits before the Deputy Commissioner when O.A.No.1 of 1987 filed under 1966 Act was enquired into. It is further urged that the petitioner is not qualified for being appointed as member or chairman of the board of trustees as there are criminal cases pending against him.

In the background facts and having regard to the rival contentions, two points would arise for consideration. First, whether this writ petition is maintainable against the impugned communication which is notice of enquiry issued by the second respondent. Secondly, whether the second respondent is competent to conduct enquiry to decide the question whether the petitioner or respondents 3 to 5 are members of the founder's family for the purposes of Sections 17(1) and 20 of the Act.

In re Point No.1

A perusal of the impugned communication/notice dated 30.8.2005 would show that the third respondent made a representation on 30.6.2005 to the second respondent and respondents 4 and 5 also filed representations on 16.8.2005 and 20.8.2005. When first representation was not considered, the third respondent filed W.P.No.17047 of 2005. By an order dated 03.8.2005, this Court disposed of the writ

petition directing the second respondent to consider the representations of the third respondent expeditiously within a period of three weeks from the date of receipt of a copy of that order and pass orders recording reasons. In pursuance thereof, the Commissioner proposed to conduct enquiry on 09.9.2005 and issued notices to the petitioner and respondents 3 to 5. No decision was taken nor any decision was proposed to be taken. It was a mere notice of enquiry. When such a notice is issued proposed to conduct enquiry ordinarily a writ petition would not lie.

In **Special Director v. Mohd. Ghulam Ghouse**, the Special Director, Enforcement Directorate issued a notice to respondents No.1 therein. Assailing which, a writ petition was filed in Bombay High Court. The High Court ordered *status quo*, which virtually stalled all the proceedings. In appeal before the Supreme Court it was urged that when show cause notice issued is clearly illegal, the High Court is justified in entertaining the writ petition. The Supreme Coiurt negatived this submission and laid down as under.

> This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court.

The petitioner challenged the impugned notice though he was asked to appear for the enquiry with documentary evidence for hearing in the matter of declaration as member of the founder's family. For this reason, the writ petition is not maintainable and is liable to be dismissed. The point No.1 is answered accordingly.

In re Point No.2:

The finding on Point No.1 as above would not however be proper disposal of this writ petition. Even after the Legislature amended Section 87(1) of the Act conferring the power on the Deputy Commissioner to decide the question whether a person is founder or member of the founder's family, various authorities who are competent to appoint board of trustees for different categories of temples themselves are deciding the question which is posing problems. Therefore, this Court is of considered opinion that the issue should also be resolved in this writ petition. Indeed the learned Counsel for petitioner submits that as Sri Venkateswara Swamy Temple is category 6(a) temple, it is only the Government, which is competent to recognise the founder or member of the founder's family. Therefore, incidentally the question also falls for consideration and it cannot be said that such question is beyond purview of the writ petition.

The Legislative Control of Charitable and Hindu Religious Institutions has a long history. In the erstwhile composite State, Madras Hindu Religious and Charitable Endowments Act, 1951 was made applicable in Andhra area. In Telangana Area, A.P. (Telangana Area) Wakf Regulation 1349 to some extent was regulating the religious institutions. The Madras Act was adopted after formation of Andhra State as A.P. (Andhra Area) Act. Both these Acts were repealed, and in consolidation, a new Act, Act No.17 of 1966 was enacted which is applicable to the entire State of Andhra Pradesh for all Charitable and Hindu Religious Institutions and Endowments. This recognized hereditary rights which were heritable and which were treated in some quarters as property. The hereditary trustee or trustees, also called Mirasidars in some area, administered all affairs of the temples as dictators. This threw up umpteen problems drastically affecting the rights of the persons having deal with temples either as devotees, employees, tenants of the lands, tenants of the building properties and the like. In 1986, the Government of Andhra Pradesh appointed A.P. Endowment Commission under the Chairmanshhip of Chief Justice Challa Kondaiah, who submitted a report in three volumes. Accepting the recommendations, with a few modifications, A.P. Legislature while repealing 1966 Act enacted A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (A.P Act No.30 of 1987). The abolition of hereditary trusteeship, appointment of non-hereditary board of trustees for temples and other institutions, a separate establishment for administering unique temples like, Sri Venkateswara Swamy Temple, Tirumala, a limited control over Hindu Mutts are some of the noteworthy salient features of the new Legislation.

A.P. Act No.30 of 1987 was challenged in the Supreme Court as *ultra vires* with the Constitution of India. In **Pannalal Bansilal v. State of A.P.**, the Supreme Court upheld the Act including Section 16, which abolished hereditary trusteeship. The Supreme Court also observed that the founder or members of the founder's family may be nominated as trustees and made chairpersons of the board of trustees to ensure proper maintenance of the temple/charitable institution. In paragraph 26 of the judgment (of AIR) it was observed:

> "Though abolition of hereditary right in trusteeship under Section 16 has already been upheld, the charitable and religious institution or endowment owes its existence to the founder or members of the family who would resultantly evince greater and keener responsibility and interest in its proper and efficient management and governance. The autonomy in this behalf is an assurance to achieve due fulfilment of the objective with which it was founded … … … In case a board of trustees is constituted, the right to preside over the board given to the founder or any member of his family would generate feeling to actively participate, not only as a true representative of the source, but the same also generate greater influence in proper and efficient management of the charitable or religious institution or endowment. Equally, it enables him to persuade other members to follow the principles, practices, tenets, customs and sampradayams of the founder of the charitable or religious institution or endowment or specific endowment. Mere membership along with others, many a times, may diminish the personality of the member of the family … … … With a view, therefore, to effectuate the object of the religious or charitable institution or endowment or specific endowment and to encourage establishment of such institutions in

future, making the founder or in his absence a member of his family to be a chairperson and to accord him major say in the management and governance would be salutary and effective. The founder or a member of his family would, thereby, enable to effectuate the proper, efficient and effective management and governance of charitable or religious institution or endowment or specific endowment thereof in future. It would add incentive to establish similar institution."

In deference to the observations of the Supreme Court as above, the Commissioner of Endowments in 1996 issued administrative guidelines authorizing the Assistant Commissioner of the area to consider applications and declare the members of founder's family in respect of a charitable or religious institution. The authority to appoint non-hereditary board of trustees in respect of three categories of temples as enumerated in Section 6 of the Act being different, the question arose whether the Assistant Commissioner can declare a person as member of founder's family even in respect of the temples to whom board of trustees has to be appointed either by the Government or the Commissioner or the Deputy Commissioner. This Court took the view that the relevant authority to recognise or declare a person to be member of founder's family in respect of different categories of temples would be such authority competent to appoint board of trustees. Accordingly, the Department of Endowments and its Officers were determining the person, who is entitled to be declared as founder member or member of founder's family.

In **State of A.P. v. Nallamilli Ramireddi**, the Supreme Court upheld constitutional validity of Section 82 of the Act while reversing the judgment of this Court, which took a contrary view. The Supreme Court delivered the judgment in this case on 29.8.2001. The Supreme Court also observed that it is for the legislature to decide whether the provisions of Tenancy Acts should be exempted in their application to the charitable or religious institutions or endowments in their entirety. The Government, therefore, decided to amend the provisions of the Act and accordingly enacted A.P. Charitable and Hindu Religious Institutions and Endowments (Amendment) Act, 2002 (hereafter called, the amendment Act) amending Sections 17, 19, 20, 75, 82, 87, 107 and 123 of the principle Act. By amendment Act, Section 87 of the Act, which conferred quasi judicial powers on the Deputy Commissioner to decide certain disputed matters, was also amended by inserting clause (h) in subsection (1). The inserted provision i.e., Section 87(1)(h) of amendment Act empowers the Deputy Commissioner having jurisdiction to enquire into and decide any dispute as to question whether a person is a founder or member of the founder's family of an institution or endowment. Sections 17, 19 and 20 of the Act were also amended, facilitating the appointment of founder or one of the members of the founder's family as member of non-hereditary board of trustees and also as chairman of the board of trustees.

It may be noticed that Section 6 of the Act requires the Commissioner to prepare separately and publish a list of charitable institutions and endowments (a)

whose annual income exceeds Rs.5,00,000; (b) whose annual income exceeds Rs.50,000/- but does not exceed Rs.5,00,000/- and (c) all other religious institutions and endowments other than Maths whose annual income does not exceed Rs.50,000/-. Chapter III (Sections 14 to 42) deals with administration and management of the religious institutions. Section 15 provides that in respect of charitable or religious institution included under Section 6(a), the Government shall constitute board of trustees consisting of nine persons. If the annual income does not exceed Rs.10,00,000/-, Commissioner is competent to constitute a board for a charitable institution falling under Section 6(a) of the Act. Insofar as the charitable institution falling under Sections 6(b) and 6(c) are concerned, the jurisdictional Deputy Commissioner and Assistant Commissioner respectively are competent to constitute board of trustees. At this stage, it is necessary to extract the relevant portions in Sections 17 and 20 of the Act.

> **17. Procedure for making appointments of trustees and their term :--** (1) In making the appointment of trustees under Section 15 the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner as the case may be, shall have due regard to the religious denomination or any such section thereof to which the institution belongs or the endowment is made and the wishes of the founder:
>
> [Provided that the founder or one of the members of the family of the founder, if qualified as prescribed shall be appointed as one of the Trustee.
>
> ***Explanation I:--*** *"Founder"* means a person who has founded an Institution or Endowment and **recognised as such by the authority competent to appoint Trustees under Section 15**.
>
> ***Explanation II:--*** *"Member of the family of the founder"* means children, grand children and so in agnatic line of succession for the time being in force and **declared or recognised as such by the relevant appointing authority.**
>
> ***Explanation III:--*** Those persons who founded temples by collecting donations partly or fully from the public as well as those who founded them on public lands shall not be recognised as founder trustees by any means"].
>
> Subsections (2) to (6) are omitted.
>
> (emphasis supplied)

> **20. Chairman of the Board of Trustees :--** (1) (a) In the case of Charitable and Religious Institution or endowment for which a Board of Trustees is constituted under Section 15, the members of the Board of Trustes shall, within such period not exceeding sixty days and in such manner as may be prescribed, elect from amongst themselves, a chairman; and if no Chairman is so elected within the prescribed period the Government in the case of a Board of Trustees constituted under clause (a) of sub-section (1) of Section 15 and the Commissioner in the case of any other Board of Trustees shall nominate one of the members as Chairman.
>
> (b) Where the founder or a member of the family of the founder is appointed as Trustee, he shall be the Chairman of the Board of

Trustee.

(2) A chairman elected or nominated under clause (a) of sub-section (1) or who becomes a Chairmen under Clause (b) shall hold office so long as he continues to be the member of the board of trustees.

Section 17 would show that in making appointment of trustees under Section 15, the Government, the Commissioner, the Deputy Commissioner or the Assistant Commissioner, as the case may be, shall appoint Board of Trustees. If there is a founder or a member of the founder's family, such person shall also be appointed as one of the trustees. Section 20(1)(b) mandates that the founder or member of the founder's family shall be the Chairman of the Board of Trustees. This was intended to achieve the purposes, which were pointed out by the Supreme Court in **Pannalal Bansilal Patil** (supra).

Explanation I to Explanation III to Section 17(1) illustrates "Founder" and "Member of the family of the founder". A person who has founded the institution or endowment is a founder if such person is recognised by the authority competent to appoint trustees under Section 15. The children, grand children in agnatic line of succession who are declared and recognised as such by the relevant appointing authority shall fall within the description of "Member of the family of the founder". However as per Explanation III to Section 17(1), a person who establishes a temple or endowment by collecting donations partly or fully from the public as well as from those who founded the temple shall not be recognised as founder trustee.

As mentioned supra, Section 87 (appearing in Chapter XII of the Act dealing with enquiries) confers powers on the Deputy Commissioner to conduct enquiry and resolve the disputes. The subject matter of enquiry by the Deputy Commissioner is clearly delineated in Section 87, which after amendment by Act 27 of 2002 reads as under.

87. Power of Deputy Commissioner to decide certain disputes and matters :-- (1) The Deputy Commissioner having jurisdiction shall have the power, after giving notice in the prescribed manner to the person concerned, to enquire into and decide any dispute as to the question –

a. Whether an institution or endowment is a charitable institution or endowment;

b. Whether an institution or endowment is a religious institution or endowment;

c. Whether any property in an endowment, if so whether it is a charitable endowment or a religious endowment;

d. Whether any property is a specific endowment;

e. Whether any person is entitled by custom or otherwise to any honour, emoluments or perquisites in any charitable or religious institution or endowment and what the established usage of such institution or endowment is in regard to any other matter;

f. Whether any institution or endowment is wholly or partly

of a secular or religious character and whether any property is given wholly or partly for secular or religious uses; or

g. Where any property or money has been given for the support of an institution or endowment which is partly of a secular character and partly of religious character or the performance of any service or charity connected with such institution or endowment or the performance of a charity which is partly of a secular character and partly of a religious character or where any property or money given is appropriated partly to secular uses and partly to religious uses, as to what portion of such property or money shall be allocated to secular or religious uses.

h. **Whether a person is a founder or a member from the family of the founder of an Institution or Endowment.**

(Subsections 2 to 4 are omitted)

(5) Any decision or order of the Deputy Commissioner deciding whether an institution or endowment is not a public institution or endowment shall not take effect unless such decision or order is confirmed by an order of the Commissioner.

(6) The presumption in respect of matters covered by clauses (a), (b), (c), (d) and (e) in sub-section (1) is that the institution or the endowment is public one and that the burden of proof in all such cases shall lie on the person claiming the institution or the endowment to be private or the property or money to be other than that of a religious endowment or specific endowment as the case may be.

(emhasis supplied)

The list of subject matters into which an enquiry can be conducted by the Deputy Commissioner is exhaustive. When a dispute arises whether a new endowment is a charitable or religious institution, whether such institution is religious institution, whether any property is an endowment to a charitable institution, whether any institution or endowment is wholly or partly secular or religious character are core subjects in relation to which a dispute often arises in the context of religious and charitable institutions. Apart from that the Deputy Commissioner is competent to decide all disputes in relation to the property endowed to a charitable or religious institution. A question as to whether any person is entitled to honours or perquisites in any charitable or religious institution can also be decided by the Deputy Commissioner.

By reason of the amendment Act of 2002, the Deputy Commissioner is now competent to enquire into the question whether a person is a founder or member of founder's family. While conducting enquiries, the Deputy Commissioner is required to follow the procedure applicable under Code of Civil Procedure, 1908 and apply

the provisions of the Indian Evidence Act, 1872 (see Section 149). As per Section 88 of the Act, the orders of the Deputy Commissioner passed under Section 87 are made subject to an appeal by the aggrieved person to the District Judge and Section 91 provides for revision to the High Court against any order passed by the Court and the orders of the District Court. Though Sections 90, 92, 93 and 94 provide for an appeal, revision and review, the orders passed by the Deputy Commissioner under Section 87 are not made appealable or revisable or reviewable by the Departmental authorities and the Government.

The power conferred by the Deputy Commissioner to conduct enquiry duly following the provisions of CPC and Evidence Act is essentially the power to adjudicate the rights of the person or a group of persons in relation to or in connection with a charitable or religious institution or endowment. It is judicial power though it is exercised by a statutory authority i.e., Deputy Commissioner appointed under Section 3(1) of the Act. That is the reason why the orders passed by the Deputy Commissioner under Section 87 are outside the purview of departmental appeal though some of the orders passed by the Deputy Commissioner in other capacity are made subject to appeal under Section 90 and revision under Sections 92 and 93. Presumably, for this reason that the Government thought it fit to confer the power on the Deputy Commissioner under Section 87 to enquire and adjudicate into the question whether a person is founder or a member of the founder's family. It may be mentioned that the right to establish a charitable or religious institution and the right to administer such institution is a very valuable right guaranteed by Articles 25 and 26 of Constitution of India and therefore in the opinion of this Court the legislature identified the same as a matter, which requires enquiry judicially.

As already pointed out Explanation I and Explanation II under subsection (1) of Section 17 explain the terms "Founder" and "Member of the family of the founder" as persons who are recognised as such by the competent authority to appoint as trustees under Section 15 of the Act. According to the learned Counsel for the petitioner, in view of this, the Government alone is competent to recognise the member of the family of the founder under Section 15(1)(a) read with Explanation II below Section 17(1). On the other hand, the learned Counsel for respondent No.1 and learned Counsel for respondent No.5 contend that pursuant to the orders of this Court in W.P.No.17047 of 2005 dated 03.8.2005, the second respondent issued notice of enquiry and at this stage the writ petition is not maintainable. According to the learned Counsel, it is always open to the second respondent to reject the application made by the contesting respondents relegating them to the Deputy Commissioner under Section 87 for proper enquiry. The learned Assistant Government Pleader for Endowments Department and the learned Counsel for contesting respondents, however, do not seriously dispute that by reason of amendment by Act 27 of 2002, under Section 87(1)(h), it is the Deputy Commissioner, who is competent to enquire into the disputes regarding the recognition of the member of the founder's family.

As rightly pointed out by the learned Counsel for the petitioner there is

apparent conflict in the Explanation to Section 17(1) and Section 87 in the matter of recognition of a person as a member or member of the founder's family even for the purpose of preferential appointment as a member or founder member of board of trustees. This Court by order dated 03.8.2005 in W.P.No.17047 of 2005 directed the Commissioner of Endowments to dispose of the representation/application of the second respondent herein pursuant to which the impugned notice of enquiry was issued to the petitioner as well as respondents 4 and 5. Against notice or notice of enquiry ordinarily a writ petition is not maintainable. For this reason, as observed supra, it is not necessary for this Court to go into the merit of rival claims in the i*nter se* dispute. This question of-late is cropping up very often. Indeed in an unreported order dated 09.12.2003 in W.P.No.25598 of 2003 (Guru Prasad v. Commissioner of Endowments), this Court declared that the Deputy Commissioner of Endowments having jurisdiction is alone competent to decide questions under Section 87(1)(h) of the Act. Therefore, having regard to the importance of the question, it is appropriate to further clarify correct position in law.

The term "Trustee" is defined in Section 2 (29), as to mean, any person whether known as mathadhipathi, mohanti, dharmakarta, mutawally, muntazim or by any other name, in whom either alone or in association with any other person, the administration or management of a charitable or religious institution or endowment is vested. As per the definition the board of trustee is also "Trustee" within the meaning of the term. The procedure for appointment of non-hereditary trustees is altogether new concept under the provisions of the A.P. Act 30 of 1987, which repealed by 1966 Act. Section 15 enumerates as noticed supra, the appointing authorities depending on the category of the religious institution. Section 17 speaks of procedure. Sections 18 and 19 prescribe qualifications and enumerate disqualifications respectively. Section 20 provides for election/appointment of chairman of the board of trustees. Section 17(3) provides that the procedure for appointment of board of trustees shall be prescribed by Rules. In exercise of their powers under Section 153 read with 17(3) of the Act, the Government promulgated A.P. Charitable and Hindu Religious Institutions and Endowments (Appointment of Trustees) Rules, 1987 (the appointment Rules, for brevity). The procedure contemplates publication of notice inviting applications for the appointment of trustees, verification of antecedents of the applicants through the subordinate officers by the Government authority and appointing the trustees having due regard to qualifications and disqualifications for trusteeship, the capacity and inclination of the person to devote sufficient time for the affairs of the institution, residence of the person and faith of the person.

Reading Section 17 with appointment Rules, it becomes clear the nature of enquiry by the competent authority is only to see whether any aspirant incurs any disqualification and whether such a person is suitable and eligible for being appointed as trustee. The very nature of power exercised under Sections 15, 17 and 20 read with the relevant Rules would leave no doubt that the functions are purely of administrative in nature, no quasi judicial functions are involved. Indeed the Rules do not even contemplate issue of a notice before an application is rejected and the statute does not confer any right on any person for being appointed as a matter of

right as trustee of a temple or institution. That is the reason why Explanation I under Section 17(1) employs the term “recognised” while dealing with preferential right of a person or a member of the founder’s family. Explanation II employs terms “declared or recognized”. Who “declares” that a person is founder or member of family of founder?

Section 87(1)(h) of the Act uses the phrase “to enquire into and decide any dispute as to the question whether a person is a founder or a member from the family of the founder of an institution or endowment”. Therefore, the provision dealing with enquiries contemplates enquiry to decide the question as to whether a person is a founder of the institution or not, whereas the Explanation I to Section 17(1) of the Act employs the phrase “a person who has founded the institution and recognized as such by the competent authority” to be given preference in the appointment as a member of Board of Trustees. The distinction in the language employed is a clear indication that if the dispute arises as to who is the person or persons who are members of the family of the founder or a founder, the enquiry has to be necessarily conducted by the Deputy Commissioner of Endowments. At the time of appointment, unless and until such person who is determined and declared to be a founder or a member of the family of the founder, is declared or recognized as such founder or member of the founder’s family, no purpose would be served. What is the scope of “recognition” at the time of appointment of Board of Trustees?

The word “recognition” is not defined in the Act. In such case, it is always permissible for the Court to interpret the undefined term or phrase, having regard to the interpretation of such word or phrase by judicial decisions and in the absence of such judicial interpretation, rely on the dictionary for arriving true meaning of the word, which is not defined in the Statute. A reference may be made to legal dictionaries and the dictionaries as well.

In ‘New Oxford Dictionary of English (Judy Pearsall (ed.): Oxford University Press, 1998: First Indian Edition 2000/Fourth Impression 2002. p.1550)’, defines the noun ‘recognition’ as “the action or process of recognizing or identification of a thing or person from previous encounters or knowledge”. The verb ‘recognize’ is defined “to identify some one from having encountered before or identify from knowledge or appearance or character”. In ‘Words and Phrases’ (Permanent Edition: (vol 36A): updated by cumulative annual pocket parts), one comes across the following definitions, which are relevant for the purpose of this judgment.

> The word “recognize,” used in the above section is given various significations by the lexicographers. Webster, among other definitions, defines its meaning to be “to avow knowledge of”. Century Dictionary, “to know again”. Webster defines the meaning of the verb “know” to be, among others given, “to recognize”.
>
> The word “recognized” means, inter alia, to acknowledge by admitting to a privileged status.

In ‘The Law Lexicon’ by Ramanatha Aiyar (Reprint Edition 1993: p 1089), the word

‘recognize’ is defined as under.

> The word “recognize”, according to the best lexicographers, signifies to admit; to acknowledge something existing before.

As noticed hereinabove the Explanation II to Section 17(1) of the Act describes children, grand children in agnatic line of succession as members of the family of the founder. The proviso to sub-section (1) of Section 17 casts an obligation on the appointing authority to appoint either the founder or one of the members of the family of the founder to be trustees in the Board. Whereas Explanation I requires a founder or a member of the family of a founder to be ‘recognised’ by the appointing authority. To reconcile Section 87(1)(h) of the Act, which confers power on Deputy Commissioner to decide question as to who is member of the founder’s family and Section 17(1) which empowers the appointing authority to ‘recognise’, one should adopt the contextual interpretation while interpreting both the provisions separately and should adopt harmonious construction of both the provisions to avoid any conflict. Doing so, this Court is of considered opinion that when there is a dispute among the members of the founder, as to who is or who are members of the founder’s family, an enquiry has to be necessarily conducted by the Deputy Commissioner of Endowments under Section 87(1)(h) of the Act. In a situation where this exercise has already been completed either before the Judgment of the Supreme Court in **Pannalal Bansilal v State of A.P.,** (supra) or while the circular issued by the Commissioner of Endowments was in operation or before coming into force of the amended Section 87(1)(h), unless and until such person or persons are recognized by the appointing authority under Section 17(1) (under both the Explanations), no such person can be appointed as a member of the Board of Trustees. In the event of ‘recognition’ of all successors of the founder as members of the founder’s family, it is for the appointing authority to recognize one of them subject to fulfilling the qualifications as one of the members of the family of the founder for being appointed as a trustee. Therefore, the conclusion is that when a member or members of the founder’s family are not determined or declared, it is only the Deputy Commissioner who has to conduct enquiry and any competent authority – be it Government; Commissioner of Endowments or Deputy commissioner or Assistant Commissioner – cannot have any jurisdiction to conduct such enquiry contemplated under Section 87(1)(h) of the Act.

Before coming into force of 1987 Act, and after coming into force of 1987 Act, the petitioner herein filed applications being O.A.No.1 of 1997 (under Section 77(c)(c) of 1966 Act) and O.A.No.40 of 1997 (under Section 87(1)(e) of 1987 Act). No doubt, in the orders passed in these two original applications, there are certain observations made which might be construed as conferring some benefit on the petitioner. The fact is that so far no enquiry has been conducted by the competent authority i.e., Deputy Commissioner of Endowments or the Government before coming into force

of the amendment to Section 87(1) or after coming into force of that provision. Therefore, in the background facts of this case, the notice of enquiry issued by the Commissioner is without jurisdiction and to that extent the submission of the petitioner's counsel commends itself to this Court. But the other submission that the Government alone should conduct enquiry to decide the question as to who among the four sons of Jagannath Goud is a question which squarely falls within the ambit of Section 87(1)(h) of the Act and therefore necessarily the jurisdictional Deputy Commissioner of Endowments alone has competence to decide the question. The order of this Court dated 03.08.2005 cannot be understood as directing an incompetent authority to conduct enquiry under Section 87(1)(h) of the Act.

In the result, for the above reasons, this Court declares that the Commissioner of Endowments is incompetent to conduct any enquiry under Section 87(1)(h) of the Act. He is therefore directed to send back the entire material including the applications made by the third respondent herein seeking recognition as a member of the founder's family, to the Deputy Commissioner of Endowments concerned immediately so as to enable the latter to complete the enquiry after giving notice to the rival claimants, within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of in the above terms. There shall be no order as to costs.

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(**V.V.S.RAO,J**)

.01.2006.

Note:

1.L.R.Copy be marked.

2.Issue CC in one week.

(By order)

YS/pln

To

(One fair copy to the Hon'ble Mr. Justice V.V.S.Rao, for His Lordships kind perusal)

1. The Principal Secretary, Endowments Department,
Government of Andhra Pradesh, Secretariat, Hyderabad.
2. The Commissioner, Endowments Department, Tilak Road,
Hyderabad
3. The Chairman & Managing Director, Transmission Corporation of
A.P.Ltd., Vidyut Soudha, Khairatabad, Hyderabad.

4. The Under Secretary, Union of India, Ministry of Law, Justice and

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5. The Secretary, A.P.Advocates' Association Library, High Court

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